IN THE HIGH COURT OF JUDICATURE AT BOMBAY

IN INSOLVENCY
PETITION NO.76 OF 2005

Re.
Dhirajlal Hakimchand Vora
... Petitioning Debtor

Ex-parte :-
M/s.Marine Container Services
(India) P.Ltd. & Ors.
Petitioning Creditors

Mr.Vishal Kanade with Mr.Nikhil Rajani i/b M/s.V.Deshpande & Co. for Petitioning Creditors

CORAM: A.S.OKA,J.
DATE : SEPTEMBER 18,2007

P.C.:

1. Heard the learned counsel appearing for the petitioning creditors as well as the counsel appearing for the supporting petitioning creditor. The learned counsel for the petitioning creditors states that notice has been duly served to the Judgment Debtor. The learned Insolvency Registrar also confirms that the notice has been duly served and affidavit of service has been filed.

2. It is stated in the petition that the Judgment Debtor Mr.Dhirajlal Hakimchand Vora is a major shareholder and a director of M/s.Rushabh Precision Bearing Ltd. as well as M/s. Shaheel Bearings (Pvt.) Ltd. and a partner and/or trustee and/or proprietor of M/s.Vora & Vora, SRS Bearing Industries and Ajanta Trade Corporation. It is stated that on another petition filed, the Judgment Debtor's son has been adjudged as an insolvent by the order dated 5th August 2003.

3. The petitioning creditors in a summary suit No.3844 of 1999 filed against the Judgment Debtors moved a notice of motion for an order directing the Judgment Debtors to furnish and deposit in this court a sum of Rs.4,73,00,000/- or any other amount as the court may direct in respect of the properties both moveable and immoveable set out in the annexures B to the Notice of Motion. Reliance is placed on order dated 21st March 2007 passed by this court directing the Judgment Debtor, his son and his daughter-in-law Sunayana jointly and independently to furnish security to the tune of Rs.2,08,00,000/- within a period of eight weeks from that date.

4. The summary suit No.3844 of 1999 was filed by the petitioning creditors against the Judgment Debtor in which a claim was made against the Judgment Debtor as a guarantor for repayment of the loan in the sum of Rs.7,50,00,000/- payable by his son to the petitioning creditors. In this summons for Judgment taken out by the petitioning creditor, this court directed the Judgment Debtor to deposit a sum of Rs.1,25,00,000.00 within a period of eight weeks. In this petition the petitioning creditors have pointed out that the decree was passed against the Judgment Debtor in the summary suit. Partial decrees were passed on 7th August 2002 and 26th March 2004.

5. My attention has been invited to the aforesaid orders as well as to the order dated 1st February 2005 passed by this court in Notice of Motion No.197 of 2004 in insolvency Notice No.57 of 2004. The said insolvency notice was taken out by the petitioning creditor on the basis of the non compliance with the decree passed in the aforesaid suit. The Notice of Motion was taken out for setting aside insolvency notice. In the said Notice of Motion it was argued before this court that a reference was made before the B.I.F.R. by M/s.Rushabh Precision Bearing Ltd. The said reference was dismissed by B.I.F.R. An appeal was preferred by the said company before A.I.F.R. This court observed in the order that the said appeal will not affect the tenability of the insolvency notice as the same was founded on a decree passed against the Judgment Debtor in his capacity as a guarantor. The learned counsel for the petitioning creditor stated out that the said order passed by this court on 1st February 2005 has attained finality.

6. Thus, the insolvency notice has remained intact. Hence, the Judgment Debtor shall be deemed to have committed an act of insolvency. Hence, the petition will have to be granted. The petition is granted in terms of payer clauses (a) and (b).

7. The parties to act upon an authenticated copy of this order.

JUDGE